

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.62 OF 2006
IN
APPEAL FROM ORDER NO.32 OF 2006

Mr.Lalchand Hiralal Gupta ...Petitioner

Versus

The Municipal Corporation of Gr.

Mumbai & Anr. ...Respondents

.....

Mr.Vinay J.Hegde for Petitioner.

Mr.A.Y.Sakhare, Sr.Counsel with Mr.Malandkar

& Mr.A.J.Bhor for Respondents.

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CORAM: A.M.KHANWILKAR, J.

APRIL 26, 2006.

P.C.

1. Heard Counsel for the parties. Perused the pleadings including the report of the Deputy Municipal Commissioner dated 25th April 2006 produced by the Counsel for the Corporation for the perusal of the Court.

2. The first allegation is that inspite of intimation given to the Corporation about the fact that the matter has been placed at 3.00 p.m. for production before the Court, the demolition process was commenced from 12.15 p.m. Insofar as this allegation is concerned, from the affidavit of the concerned Ward Officer, it is obvious that he had no intimation about filing of such Appeal from any quarter. The fact that he had no intimation is also reinforced from the preliminary enquiry undertaken by the Deputy Municipal Commissioner. It transpires that the notice given by the Petitioner about the intention to move the Court was served in the Legal Department at around 12.30 p.m. The Managing Clerk of the Legal Department forwarded the same to the Superintendent at around 12.50 p.m. who in turn, forwarded the same to the Advocate Mrs.Joglekar, Assistant Officer to appear in Court at 3.00 p.m. when the matter will be taken up in Court. The Superintendent did not send any communication to the concerned Ward Officer. If that was done, perhaps, the situation could have been avoided.

3. Suffice it to observe that the Ward Officer had no intimation in writing from any quarter about the institution of the Appeal in this Court or of the fact that the Appeal will be heard at 3.00 p.m. by the Court on 16th January 2006. Be that as it may, the demolition process was commenced at 12.15 p.m. much before the intimation was received by the Legal Department in terms of order passed by the superior officers. It is not a case of wilful disobedience by the Officer of the Corporation on the site.

4. The second allegation is that inspite of order passed in favour of the Petitioner and which fact was brought to the notice of the concerned Officers on site, the Officers continued demolition activity and continued the same till 4.15 p.m. That fact has been countered in the reply affidavit filed by the Respondents. In Para 8 of the reply affidavit, it is stated that the demolition process commenced at about 12.15 p.m. and was completed at around 2.30 p.m. No rejoinder affidavit has been

filed to counter this position. The statement made on affidavit by the Respondents is supported by the office record maintained by the Corporation. It is therefore not possible to accept the said allegation made in the Petition.

5. Accordingly, this Petition is dismissed. Notice issued to Respondents stand discharged.

A.M.KHANWILKAR, J.